

Summary of Testimony: Regulation 454 CMR 25.00
Occupational Safety and Health for State Workers

Notes:

- Date of Public Hearing: 12/29/14 (19 Staniford Street; Boston, MA).
- 14 hearing attendees. 6 speakers.
- Comment period closed 12/29/14.
- 3 written comments received during comment period.

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>We hope that extending OSHA regulations to state workers will prevent needless injuries and save lives. These regulations incorporated several key components that are essential for an effective occupational safety and health program. One, clearly articulating the responsibility of state agencies to provide a safe and healthy workplace in accordance with the OSHA General Duty Clause. The ability for any worker to report a violation which will be investigated by DLS. Finally, the guarantee a union representative will be able to participate in the process to ensure workers are able to bring their critical perspective to the investigation. I urge you to ensure that DLS is sufficiently funded, and staffed to implement the training, technical assistance and enforcement to fully implement the law and regulation.</p> <p>I look forward to the implementation of the OSHA standards so hopefully this issue can be addressed safely and timely.</p>	<p>DLS agrees that the new law with proper support will improve workplace safety and health for Massachusetts executive branch employees.</p> <p>DLS appreciates the importance of workers being able to report safety and health issues, and of the need for DLS to conduct follow-up investigation.</p> <p>DLS has always recognized the importance of employee involvement in the investigative process and will continue to do so.</p>	None
Proposed regulations set the framework to implement an effective safety and health management program across all	DLS agrees that the new law with proper support will improve workplace safety and	None

<p>state agencies in the executive branch. Adopting OSHA standards provides consistency across state agencies; authority to DLS to conduct inspections and investigations; employees or their union representatives a mechanism to report unsafe conditions to DLS without retaliation; for an employee representative to be present during an inspection; DLS with the power to issue compliance orders to correct; the Attorney General the right to pursue injunctive relief to enforce DLS's orders; and that agencies comply with the recordkeeping rules. All these requirements are consistent with federal law that is a proven success in private industry – cutting workplace fatalities in half and reducing injury and illness rates by at least 40%, while providing enormous amount of savings in workers' compensation.</p> <p>I must stress the need for the next administration and the legislature to provide DLS with the necessary resources to implement this important program.</p>	<p>health for Massachusetts executive branch employees.</p>	
<p>The proposed regulations include important components that will advance workplace health and safety and serve to prevent workplace injuries, illnesses and fatalities if DLS and the responsible agencies are adequately funded to support employer and employee education about the regulations and provide for a strong inspection and enforcement program. The components include:</p> <ul style="list-style-type: none"> • Making clear the responsibility of state agencies under the General Duty Clause to furnish a workplace that is free from recognized hazards that are likely to cause serious harm. • The ability of any worker to report a violation and be assured that the Department of Labor Standards (DLS) will investigate the complaint. • The assurance that a union representative will be 	<p>DLS agrees that the new law with proper support will improve workplace safety and health for Massachusetts executive branch employees.</p> <p>DLS appreciates the importance of workers being able to report safety and health issues, and of the need for DLS to conduct follow-up investigation.</p> <p>DLS has always recognized the importance of employee involvement in the investigative process and will continue to do so.</p>	<p>None</p>

able to participate in the walk-through and closing conference, to ensure that workers are able to bring their critical perspective to the investigation.		
The US Occupational Safety and Health Administration's standards often require explanation for effective application. OSHA's web site includes compliance directives and interpretation guidance regarding its standards. These should be applied by DLS and used to help employers and employees understand how each standard is intended to protect worker safety and health. DLS should also incorporate many of the best practices in OSHA's Field Operations Manual (FOM).	DLS intends to follow OSHA and other states that have adopted OSHA standards for public employees as closely as possible. Interpretation letters, compliance directives and the FOM will be utilized as policy, and standard operating procedures. However, they are not regulations and, therefore, are not part of the proposed regulations.	None
I believe there needs to be stronger anti-retaliation protections for employees who have reported workplace safety and health hazards. The regulations' effectiveness will require that workers feel safe reporting violations without fear of retaliation or reprisal. DLS will need to strengthen the existing provisions for civil action and work with OSHA and agencies in other state to establish measures that provide effective enforcement of anti-retaliation and whistleblower protections. This is something that the Commonwealth and interested non-governmental organizations should monitor carefully. Workers need to be able to freely come forward with their concerns.	<p>The MGL (149, section 6 ½) under which this regulation is proposed did not indicate any alteration to existing MGL (149, section 185) that provides for employee anti-retaliation. MGL 149, section 6 ½ did not indicate any extension of anti-retaliation protection.</p> <p>With over 90% of Massachusetts state employees covered by collective bargaining agreements almost all state employees are due just cause for any disciplinary action, which provides an existing system for anti-retaliation.</p> <p>OSHA handles anti-retaliation complaints for all Federal agencies. DLS is not equipped, skilled or resourced appropriately to effectively administer anti-retaliation enforcement in the manner OSHA does.</p>	None
I think it will be important that there be an 11c mechanism and that it be longer than the 30 days OSHA provides. I don't know if that is something that can be incorporated into	<i>For anti-retaliation (11c) discussion see above.</i>	None

the current regulations. I think that would be important.		
<p>Making a boilerplate programs and conducting the education is great but going back to continuous improvement to see what is working is where we need to go next.</p> <p>You're going to need employee involvement to understand the work environment.</p> <p>Unfortunately, the regulations only provide the mechanism that workers currently have in place, civil enforcement, and they don't appear to have a means to enforce OSHA's 11c protections through DLS.</p>	<p>DLS will enforce OSHA regulations across state agencies as appropriate in the same manner Federal OSHA enforces its standards across the country and a wide variety of industries.</p> <p>DLS agrees that the workers' perspective is crucial during a workplace inspection. DLS will follow 1903.8, which clearly calls for employee or employee representation during the inspection process.</p> <p><i>For anti-retaliation (11c) discussion see above.</i></p>	None
<p>There's a reason that OSHA allows and encourages unions to participate in the walk-through process and participate in closing conference and receive a copy of the report and that's because it's through the workers' eyes and ears on the shop floor that will ensure that safety hazards are truly identified and remedy made.</p>	<p>DLS agrees that the workers' perspective is crucial during a workplace inspection. DLS will follow 1903.8, which provides for employee or employee representation during the inspection process.</p> <p>OSHA regulations do not stipulate that a copy of the report be provided to the employee or employee representative. DLS will follow the OSHA regulations, and consider this when developing standard operating procedures.</p>	None
<p>The law is only as strong as the resources behind it so we'll be looking to the new administration to fund this initiative.</p>	<p>DLS agrees that the new law with proper support will improve workplace safety and health for Massachusetts executive branch employees.</p>	None
<p>Workers will need to be able to call in a violation of the recordkeeping violations or a copy of any of the reports so</p>	<p>The proposed regulation 454 CMR 25.00 reads, "25.03(4) Employees or employee</p>	None

the wording should be looked at so that it does not limit employees to only reporting hazards or things that are dangerous.	representatives shall have the right to report unsafe and unhealthful working conditions to the employer and/or to the department.” DLS interprets this to include all standards to be incorporated by reference (1903, 1904, 1910 and 1926). Any violation of recordkeeping would be considered to create a potential unsafe or unhealthy workplace by limiting the ability of DLS to accurately assess an agency’s safety and health record. A similar assessment would be made of any other alleged violation of the standards. Therefore, no change to the current wording has been deemed necessary.	
Sufficient funding is necessary to provide the management of continuous assessment and feedback from workers as well as education, training, technical assistance and enforcement.	DLS agrees that the new law with proper support will improve workplace safety and health for Massachusetts executive branch employees.	None
The regulations call for posting notices about the new legal protections and how to use them. In this digital era most agencies and individuals use the internet as a source for up-to-date information, I recommend that the regulations be revised to require not only posting of the physical notice in the workplace, but posting the information on each agency’s website, as well as providing links to similar postings on the DLS and the Executive Office of Administration and Finance, Human Resources Division (HRD). The web links should provide the regulations, links to the Federal OSHA website, DLS poster and brochure regarding the new standards, and links to organizations and websites that can provide health and safety resources and support to employees, managers, and the employers.	<p>The website for each agency is a public facing document intended to be a resource to all the people of the Commonwealth. Posting internal requirements such as the proposed regulations on every agency’s website would be inappropriate.</p> <p>However, the proposed regulations stipulate under 1903.2(a)(1) that, “Each employer shall post and keep posted a notice or notices, to be furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including</p>	None

	<p>copies of the Act and of specific safety and health standards, employees should contact the employer or the nearest office of the Department of Labor. Such notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.” Therefore, it would be expected that if an agency utilizes an intranet page (internal website) for posting of required materials, such as wage and hour notices, that the postings required under this regulation would be posted similarly.</p> <p>Links to additional resources, or websites, would be an operational issue for inclusion or exclusion on postings as deemed appropriate by DLS and HRD, and outside the bounds of these regulations.</p>	
<p>I recommend that the compliance section of the regulations require a report be completed and delivered within no more than 120 days of completion of the inspection process, rather than the 180 days allotted now. Employees and employers need to be able to use DLS recommendations to remedy workplace health and safety hazards and risks for injury, illness, and/or fatality. Taking more than four months to provide a report will frustrate the intended goals of this effort and potentially put workers at increased risk of harm.</p>	<p>DLS agrees that timely reporting is vital to improving workplace safety and health. DLS has every intention of working to issue reports as quickly as possible. However, DLS has committed to an expanded role where possible solutions will be provided in addition to any safety or health violations. This additional element requires time to conduct research, and is far beyond the typical OSHA reporting. Nonetheless, DLS is committed to operate in a manner as close to OSHA as possible, which is</p>	<p>None</p>

	<p>allowed under 1903.14(a) to issue a citation up to 6 months following the occurrence of any alleged violation.</p> <p>DLS in investigating state workplace safety and health issues will on occasion be required to conduct its investigation in collaboration with other state, local and federal agencies. In the experience of DLS in issuing similar reports in collaboration with state, local and federal agencies for its municipal safety and health program DLS believes that 180 days is an appropriate amount of time to gather all necessary information to issue a report.</p>	
As a state employee in higher education I hope that myself and all my colleagues at work will be covered by this regulation.	MGL 149, section 6 ½ states, “This section shall apply to places of employment subject to section 28 of chapter 7.” State higher education institutions are not subject to section 28 of chapter 7. Therefore, this law, and subsequent regulations, will not apply.	None